

The State of South Carolina



Office of the Attorney General

Opinion No 87-15
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February 5, 1987

Motte L. Talley, Staff Attorney
South Carolina Court Administration
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Dear Motte:

In a letter to this Office you referenced that Section 19-19-10 of the Code which provided for the payment of witness fees, plus mileage, for persons summoned to testify in civil cases in the court of common pleas and in magistrate's court was specifically repealed by Act No. 100 of 1985. Such Act recognized the promulgation by the State Supreme Court of Rules of Civil Procedure governing practice and procedure in civil actions in courts in this State.

Rule 45(g) of the Rules of Civil Procedure provides:

...(a) witness subpoenaed to attend upon trial or hearing under these Rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same \$25.00 per day, and mileage in the same amount as provided by law for official travel of State officers and employees.

As referenced by you, Rule 81 of the same Rules provides that such Rules, including Rule 45(g), "... shall apply insofar as practicable in magistrate's courts ... to the extent they are not inconsistent with the statutes and rules governing those courts."

In the opinion of this Office, Rule 45(g) should be construed as providing the fees and mileage for witnesses summoned to testify in magistrate's court. As referenced above, the former statute which provided for such payment was specifically repealed by the Act which recognized the promulgation by the State Supreme Court of the Rules of Civil Procedure.

Mr. Talley
February 5, 1987
Page Two

Therefore, pursuant to Rule 45(g) of such Rules, witnesses subpoenaed for a trial in a magistrate's court should receive twenty-five dollars per day and the same mileage as provided for official travel for state employees and officers.

If there is anything further, please advise.

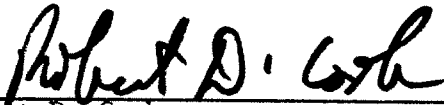
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

cc: Louis L. Rosen, Director
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